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8-15-16
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

David MacKinnon, Jr.,

Complainant,

vs.

Case No. C.15-02-022

San Diego Gas & Electric Company
(U902M),

(Filed February 27, 2015)

Defendant.

MACKINNON MOTION FOR PERMISSION TO LATE-FILE OPENING COMMENTS

David MacKinnon
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15 August 2016

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I. Discussion

On 18 July 2016 we were served with the CPUC proposed decision in Case No. C.15-02-022 after the Commission extended the deadline on 12 February 2016. Given surprise delivery of the decision due to the Commission delay, we were unable to respond with our comments in a timely manner because of prescheduled work responsibilities. David MacKinnon works for NBC Universal, NBC 7 Sand Diego and was engaged in offsite planning for the lead up to the Olympics and unable to get a timely response submitted.

The Commission has allowed such late submissions in the past (R12-11-005 and R10-12-007) and should allow the same latitude here. We request the Commission allow late filing of our comments on the proposed decision.

II. Motion

Based on the foregoing discussion, we respectfully request that the Commission allow us to late-file comments on the PD.

Respectfully submitted,



8/15/2016

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MACKINNON COMMENT ON PROPOSED DECISION

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14 August 2016

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MACKINNON COMMENT ON PROPOSED DECISION

We believe the commission should reject the proposed decision submitted by ALJ Colbert on 18 July 2016 and schedule a hearing immediately. Approval of ALJ Colbert's proposed decision would indicate that the Commission favors the convenience of a private monopoly over Constitutionally protected private property rights. Endorsement of this decision would have the dangerous consequence of giving SDG&E, a supposed regulated utility, unfettered control on private property and would suggest that the Commission will look the other way when the utility damages property, without an easement. SDG&E aggressively trimmed trees inside our property over several years and attempted to cut down our trees, even using armed local law enforcement to impose their will. SDG&E didn't have easement rights and the trees in question were nowhere near service lines. The Commission differentiates vegetation management rights and responsibilities between Service lines and Distribution lines in its Tariff Rules, yet ALJ Colbert ignores this important distinction in his proposed decision. The egregious abuse of power by SDG&E over several years has made us feel vulnerable in our own home and made us fundamentally question whether the government, specifically the Commission, will protect our rights as homeowners or bow to the demands of a corporate monopoly.

ALJ Colbert has made numerous legal and factual errors in his decision and put the Commission in a policy position that is at odds with California and US Law. Namely, the proposed decision purports to decide on the issue of mootness, and thereby dismiss the complaint, but then goes on in a clumsy attempt to rule on factual issues of the complaint and create a precedent where none should exist. The proposed decision misunderstands such basic facts of the complaint that we are left with no other explanation other than that this matter was not read in its entirety nor taken seriously. Furthermore, prior trespasses make this argument of mootness absurd. What they may do in the future is only relevant to the extent that SDG&E is required to honor the property rights of the people they are supposed to serve. The issue isn't just about what this monopoly may or may not do in the future but what they have already done on our property. SDG&E doesn't dispute the fact that they did cut and attempt to remove trees well inside our private property without an easement. This system of adjudication would be worthless if a monopoly can break the law then claim any proceeding is moot because they say they won't do it again.

ALJ Colbert parrots SDG&E's Motion verbatim when stating facts. Facts that we clearly disputed in our various responses. For example, the Decision states that "SDG&E owns and maintains a 4 kilovolt residential electric distribution circuit on the city sidewalk adjacent to Complainant's property, which provides power to Mr. MacKinnon and his neighbors"ⁱ. This is simply untrue and we said as much in our response. The lines that run down Madison Ave serve the houses to the west of our property. The transformer that feeds our house power is on the East side of our property and is fed from lines that go down New Hampshire Ave also to the East side of our property. If the lines along Madison Ave in front of our property were cut and closed today, we would still have power at our house. The lines in question are not service lines and do not serve our property. SDG&E hasn't proven otherwise.

Second, ALJ Colbert fails to acknowledge that the trees in question are well inside our property, on which SDG&E does not have an easement. He also doesn't recognize that excessive trimming has

occurred many times over many years and that our complaints to the utility have resulted in the use of local Police to enforce SDG&E's will and threats for more drastic, punitive trimming.

Third, ALJ Colbert errs when he states that SDG&E "has no plans to enter Complainant's property to trim his palm trees to protect equipment on the replacement Madison Pole". SDGE's own statements are much more ambiguous. SDG&E Declaration from their Motion to Dismiss actually says "I [Don Akau] anticipate that the current G.O. 95 clearances will be met for another 8-10 years"ⁱⁱ clearly adding a qualifying time-horizon and ambiguity that is nowhere near as clear as the Decision would have you believe. I currently have no plans to get a haircut, but that isn't the same as swearing off haircuts forever and it's more likely than not that I will need one eventually. Past-performance is the best predictor of future actions.

Fourth, the Decision cites *BudSco Chemical Enterprises, Inc. v. Adcock*, 2012 Cal. P.U.C. LEXIS 295 to illustrate the Commission's "long-standing policy" against issuing "advisory" opinions on "speculative" actions. There are three issues with this. One, this is not speculation on our part. SDGE's has drastically trimmed trees outside their public easement, multiple times over many years and even attempted unauthorized removal of our trees. They went so far as to bring a stump grinder to our house and attempted to dismantle our fence in an effort to kill and remove out trees without our permission. When asked about this at the Pre-hearing conference, SDG&E attempted to obfuscate their actions from the Judge. Two, the Decision goes back to SDG&E's statement that it does not anticipate needing to enter the property to trim or remove trees. The Decision ignores prior bad behavior on the part of SDG&E and then assumes that the word "anticipates" is unambiguous and forthright. It is not. SDG&E has proven to be deceptive and manipulative and yet the Decision assumes SDG&E will meet and exceed its stipulations. Third, 4 years (the *BudSco* case was decided in 2012) is not "long-standing" for an agency almost 100 years old.

Lastly, after the Decision decides for SDG&E on the issue of Dismissal for mootness, and then again on the issue of Summary Judgment, it attempts to use SDG&E's faulty argument to decide the merits of the case. Without hearing or evidence, ALJ Colbert assumes that "it is reasonable to expect that, as a condition of receiving electric service, private citizens may be required to cooperate with vegetation management practices by the utility to protect the equipment that provides power to their home, and for those practices to be administered in a practical and cost-effective way that does not pose an undue burden to ratepayers." ALJ Colbert could just as easily use his newfound reasonableness to protect private property rights granted in the US and State Constitutions. An example; *It is reasonable to expect that, as a condition of having free use of public roads and public property, private utilities would set lines in such a way as to not interfere with constitutionally guaranteed property rights and may be required to acquire property rights to protect their distribution equipment and the safety of their customers.* ALJ Colbert also assumes that electrical service is a choice with reasonable terms and conditions and one can decide to use or not use the service. The Commission itself sees power service as a "basic need"ⁱⁱⁱ and with no alternative providers we are stuck with the only option available to us. However, for sake of argument, assume we disconnected our power and were no longer subject to SDG&E's Tariff Rules. SDG&E's distribution lines would still be in close proximity to our property line, so what would their remedy be then? The compulsory nature of SDG&E's product shouldn't be a bludgeon they can use to enforce their will beyond what the law has granted them.

Again, we urge the Commission to look at the Tariff Rules and recognize that SDG&E is attempting, with ALJ Colbert's assistance, to take the terms granted them under Tariff Rule 16 (Service Extensions) and apply them to Rule 15 (Distribution Line Extensions) equipment. If this argument were successful it would obviate the need for utility easements in the State since a condition of getting power service would grant the monopoly near unlimited rights as long as it is in the name of delivering power, safety, or protecting ratepayers. Imagine the dangerous precedent that this proposed decision would establish:

SDG&E could cut down any tree on any property that receives power from the utility, no matter proximity to service lines or existence of easements. This monopoly's customers are entitled to protection by its regulating authority. There is a reason monopolies are regulated. The Commission must insist that SDG&E follow the law.

Lastly, since this is likely our last correspondence on this issue, we must say that the Commission has done a terrible job protecting our rights as citizens of this State and Country and clearly favors the utilities it regulates every step of the way. Our belief that the government will protect our property rights has been shattered due to this experience. Disappointment and distrust have displaced any confidence we once had in this system. We hope the Commission will look closely at the facts of this case and recognize, as we do, that the consequences this proposed decision extend beyond the survival of the trees in our front yard. This issue will, at its core, demonstrate if SDG&E is actually a regulated utility with checks to keep it inside the bounds of its given authority. Conversely, if ALJ Colbert's proposed decision is approved it will suggest that SDG&E is an unregulated monopoly, whose bottom line is more important to the Commission than our fundamental Federal and State property rights.

The Commission has been under a lot of pressure lately to fix an obviously cozy relationship with regulated utilities. Here's your chance to start.

Respectfully submitted,



8/15/2016

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ⁱ PROPOSED DECISION, Page 3

ⁱⁱ MOTION TO DISMISS- 25 Sept 2015, Declaration, Page 2

